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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CYNTHIA BRIONES and MAURICE
BRIONES, in each case individually
and as a successor in interest to Kyle
Briones, deceased,

Plaintiffs,

vs.

CITY OF ONTARIO; STAFFORD
CROSS, MIKE GONZALEZ,
MICHAEL MORA, DARRYL
BROWN, KYLE MORGAN and DOES
6-10, inclusive,

Defendants.

Case No. 5:17-cv-00590-DMG-JPR

**PLAINTIFFS' RESPONSES AND
OBJECTIONS TO DEFENDANTS'
PROPOSED STATEMENT OF
UNCONTROVERTED FACTS IN
SUPPORT OF DEFENDANTS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT;
PLAINTIFFS' ADDITIONAL
UNCONTROVERTED MATERIAL
FACTS**

Date: May 18, 2018

Time: 2:00 p.m.

Crtm.: 8C (First St. Courthouse)

PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANTS'
STATEMENT OF UNCONTROVERTED FACTS; PLAINTIFFS'
ADDITIONAL UNCONTROVERTED MATERIAL FACTS

Pursuant to Local Rule 56-2, Plaintiffs respectfully submit their responses and objections to Defendants' Statement of Uncontroverted Facts and Plaintiffs' Additional Uncontroverted Material Facts. Defendants' Statement of Uncontroverted Facts (Dkt. # 39-1) was lodged on April 6, 2018. Plaintiffs hereby refute each of Defendants' "Conclusions of Law" respond to Defendants' Conclusions of Law within Plaintiffs' Memorandum of Points and Authorities filed concurrently herewith.

DATED: April 20, 2018

LAW OFFICES OF DALE K. GALIPO

By: /s/ Renee V. Masongsong

Dale K. Galipo
Renee V. Masongsong
Attorneys for Plaintiffs

No.	Defendants' Uncontroverted Facts and Supporting Evidence	Plaintiffs' Response and Supporting Evidence
1.	<p>After 1:00 a.m. on October 5, 2016, Ontario Police officers received a call reporting a possible solo-vehicle traffic collision with a man in the driver's seat, unconscious, and the engine still running.</p> <p>Dep. of Michael Mora ("Mora Dep.") at 19:5-9; Ex. 4 at 01:19:39-01:20:44. Relevant pages of the Mora Dep. at attached as Ex. "A" to the Decl. of Daniel S. Roberts ("Roberts Decl.")</p>	<p><u>Objection</u>: vague as to time.</p> <p><u>Disputed</u> as to "unconscious." Ex. 2 to Masongsong Decl. (Morgan Depo.) at 13:14-18 (testifying that he had information that Mr. Briones was conscious); Ex. 3 to Masongsong Decl. (Cross Depo.) at 16:4-6 (testifying that he had no information that Mr. Briones had temporarily lost consciousness); Ex. 4 to Masongsong Decl. (Brown Depo.) at 43:14-16.</p>
2.	<p>When the first officer arrived, he found Mr. Briones's car well off the road in the middle of a dirt field.</p> <p>Mora Dep. at 19:23-20:10; Ex. 1.</p>	Undisputed.
3.	<p>Upon arriving to Mr. Briones's car, the officer observed Mr. Briones with his eyes closed, slumped over</p>	Undisputed.

1		the steering wheel, possibly	
2		unconscious.	
3		Mora Dep. at 22:7-15.	
4	4.	The officer attempted to wake Mr.	Undisputed.
5		Briones by tapping on his shoulder	
6		several times and saying something	
7		like "Sir. Sir, you need to wake up."	
8		Mora Dep. at 22:16-21.	
9	5.	Mr. Briones took approximately 10-	Undisputed.
10		20 seconds to respond to the	
11		officer's attempt to wake him.	
12		Mora Dep. at 22:22-23:6.	
13	6.	When he did wake up, he looked	Undisputed.
14		confused. Mora Dep. at 26:9-11.	
15	7.	As officers led him away from the	<u>Disputed</u> that it was appropriate to
16		car (for safety reasons, because the	remove Mr. Briones from the car.
17		vehicle was smoking), he appeared	Clark. Decl. at
18		to be wobbly and unsteady on his	<u>Disputed</u> that the car was smoking.
19		feet.	Ex. 14 to Masongsong Decl. (Video)
20		Mora Dep. at 28:9-29:1.	at 01:04-01:06 (an officer states that
21			the car is steaming); Ex. 1 to
22			Masongsong Decl. (Nshaiwat Depo.)
23			at 51:7-9.
24	8.	Officer Mora had the opinion that	<u>Disputed</u> on the basis that it was
25		Mr. Briones was drunk.	unreasonable for Officer Mora to
26		Mora Dep. at 31:7-10.	form the opinion that Mr. Briones
27			was drunk.
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1		The officers had no information that
2		Mr. Briones was intoxicated, did not
3		smell any alcohol, and did not see any
4		evidence of alcoholic beverages. Ex.
5		5 to Masongsong Decl. (Gonzales
6		Depo.) at 33:15-17; Ex. 4 to
7		Masongsong Decl. (Brown Depo.) at
8		43:7-9; Ex. 6 to Masongsong Decl.
9		(Mora Depo.) at 29:2-3, 71:22-72:2;
10		Ex. 1 to Masongsong Decl. (Nshaiwat
11		Depo.) at 26:4-15, 75:21-25; <i>see</i>
12		<i>generally</i> Ex. 11 to Masongsong
13		Decl. (Police Event); Clark Decl. at
14		¶12
15	9.	<u>Disputed</u> on the basis that it was
16	As officers were escorting him a	inappropriate to remove Mr. Briones
17	safe distance away from the	from the car. Clark. Decl. at
18	smoking car, he turned back and	<u>Disputed</u> that the car was smoking.
19	took a step or so toward the car.	Ex. 14 to Masongsong Decl. (Video)
20	Mora Dep. at 29:10-30:9.	at 01:04-01:06 (an officer states that
21		the car is steaming); Ex. 1 to
22		Masongsong Decl. (Nshaiwat Depo.)
23		at 51:7-9.
24		<u>Disputed</u> to the extent that the
25		officer's own self-serving testimony
26		is the only evidence that Mr. Briones
27		
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1		turned back and took a step toward
2		the car.
3	10.	<u>Disputed</u> that the officers had
4	He refused officer requests to sit	reasonable suspicion to detain Mr.
5	down on the ground, so officers	Briones. The officers had no
6	pulled him to the ground to get him	information that Mr. Briones had
7	to stop. Mora Dep. at 33:18-24; Dep.	committed any crime, and when the
8	of Mike Gonzales (“Gonzales Dep.”)	officers arrived on scene, there was
9	at 15:15- 16:3; 17:10-17:19. Copies	no crime in progress. Clark Decl. at ¶
10	of relevant page of the Gonzales	12, ¶ 22; Ex. 5 to Masongsong Decl.
11	Dep. are attached as Exhibit “B” to	(Gonzales Depo.) at 15:3-11; Ex. 3 to
12	the Roberts Decl.	Masongsong Decl. (Cross Depo.) at
13		45:15-46:3.
14	11.	<u>Objection</u> : compound; vague and
15	Rather than sit down on the ground	ambiguous as to “struggle.”
16	away from the smoking car so that	<u>Disputed</u> that the car was smoking.
17	the officers could investigate how	Ex. 14 to Masongsong Decl. (Video)
18	he ended up passed out in his car in	at 01:04-01:06 (an officer states that
19	the middle of the field, and whether	the car is steaming); Ex. 1 to
20	any crime was involved, Mr.	Masongsong Decl. (Nshaiwat Depo.)
21	Briones tried to get back up and	at 51:7-9 (testifying that the car was
22	struggled with officers.	not smoking).
23	Mora Dep. at 34:15-35:8.	<u>Disputed</u> on the basis that the officers
24		had no reasonable suspicion to detain
25		Mr. Briones. The officers had no
26		information that Mr. Briones had
27		committed any crime, and when the
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1		officers arrived on scene, there was
2		no crime in progress. Clark Decl. at ¶
3		12, ¶ 22; Ex. 5 to Masongsong Decl.
4		(Gonzales Depo.) at 15:3-11; Ex. 3 to
5		Masongsong Decl. (Cross Depo.) at
6		45:15-46:3.
7		<u>Disputed</u> that Mr. Briones was
8		“struggling”—Mr. Briones only
9		minimally resisted the restraints, and
10		Mr. Briones never punched, kicked,
11		hit, injured, or threatened anyone.
12		Clark Decl. at ¶ 24, ¶ 25
13	12.	<u>Objection</u> : compound; vague and
14	This struggle with officers began	ambiguous as to “struggle.”
15	within approximately 35 seconds of	<u>Disputed</u> that Mr. Briones was
16	the time Mr. Briones was able to	“struggling”—Mr. Briones only
17	rise out of his car.	minimally resisted the restraints, and
18	AXON_Flex_Video_2016- 10-	Mr. Briones never punched, kicked,
19	05_0124 at approx. 0:45 through	hit, injured, or threatened anyone.
20	1:20. A disc containing a copy of	Clark Decl. at ¶ 24, ¶ 25
21	the video is lodged with the Court	
22	and identified as	
23	Exhibit “C.”	
24	13.	Undisputed.
25	Police and paramedics were both	
26	dispatched to the scene at the same	
27	time.	
28	Mora Dep. Ex. 4 at 01:19:05;	
	Detailed History of for Fire Event	

1		#F162790003, at 01:19:04. A copy	
2		of the Detailed History for Fire	
3		Event is attached as Exhibit “D” to	
4		the Roberts Declaration.	
5	14.	When the paramedics arrived to the	<u>Objection:</u> Vague and ambiguous as
6		scene, Mr. Briones was already	to “struggle” and vague and
7		struggling with the officers.	ambiguous as to time.
8		Mora Dep. Ex. 4 at 01:25:55 (“SUBJ	<u>Disputed</u> that Mr. Briones was
9		COMBATIVE”), 01:26:28 (“TASER	“struggling”—Mr. Briones only
10		DEPLOYED”); Detailed History for	minimally resisted the restraints, and
11		Fire Event (Ex. D) at 01:27:11	Mr. Briones never punched, kicked,
12		(“*ONSCN”).	hit, injured, or threatened anyone.
13			Clark Decl. at ¶ 24, ¶ 25
14	15.	As soon as Mr. Briones was fully	<u>Objections:</u> compound; vague and
15		restrained, making it safe to do so,	ambiguous as to time; vague and
16		officers signaled for the paramedics	ambiguous as to “officers”; vague
17		to come over from their staged	and ambiguous as to “fully
18		position.	restrained.”
19		AXON_Flex_Video_2016- 10-	<u>Disputed</u> on the basis that Mr.
20		05_0124 (Ex. C) at approx. 7:30-	Briones was unresponsive after he
21		8:00.	was handcuffed, and the
22			paramedics were staged for
23			approximately an additional 3 to 4
24			minutes after Mr. Briones was
25			handcuffed. Ex. 14 to Masongsong
26			Decl. (Video) at 05:29, 07:54,
27			08:03, 09:12; Ex. 17 to
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1		Masongsong Decl. (Match-Action)
2		at 05:29, 07:54, 08:03, 09:12; Ex. 2
3		to Masongsong Decl. (Morgan
4		Depo.) at 30:3-9, 40:1-10, 45:15-
5		46:16, 48:19-49:10 (testifying that
6		he thought Mr. Briones was faking
7		being passed out); Ex. 3 to
8		Masongsong Decl. (Cross Depo.) at
9		61:9-18); Ex. 10 to Masongsong
10		Decl. (Cross Statement) at 13:11-13
11		(stating that all the fight went out of
12		Mr. Briones after he was
13		handcuffed), 14:11-13; Ex. 4 to
14		Masongsong Decl. (Brown Depo.)
15		at 50:6-20 (testifying that Mr.
16		Briones suddenly went calm),
17		55:19-25; Ex. 11 to Masongsong
18		Decl. (Police Event) at page 2
19		1:29:27, 1:32:40; Ex. 12 to
20		Masongsong Decl. (Pre-hospital
21		Care Report) at page 2, "Patient
22		Vitals."
23	16.	Once they were able to get Mr.
24		Briones handcuffed, and even before
25		they were able to get his legs
26		restrained, the officers were
27		discussing whether he could breathe
28		<u>Objections</u> : compound; calls for
		speculation as to whether Mr.
		Briones was breathing; vague and
		ambiguous as to time.

1	(they believed he could) and whether	<u>Disputed</u> that Mr. Briones was
2	he had a pulse (they believed he did).	breathing. Ex. 14 to Masongsong
3	AXON_Flex_Video_2016- 10-	Decl. (Video) at 05:29-0:9:12
4	05_0124 (Ex. C) at approx. 6:53-	(showing that Mr. Briones was
5	7:22.	unresponsive); Ex. 17 to Masongsong
6		Decl. (Match-Action) at 05:29-09:12.
7		The snoring sound that Mr. Briones
8		made was an agonal (near death)
9		sound. O'Halloran Decl. at ¶ 27.
10	17. Sergeant Cross even told his officers	<u>Objection</u> : vague as to time.
11	"I want to make sure we don't	Undisputed.
12	smother him."	
13	AXON_Flex_Video_2016- 10-	
14	05_0124 (Ex. C) at approx. 6:53-	
15	7:02.	
16	18. The only facts Plaintiffs claim to	<u>Disputed</u> . Ex. 6 to Masongsong Decl.
17	have to show that a final policy	(Mora Depo.) at 96:2-17.
18	maker for the City knew of and	Following the incident with Mr.
19	specifically approved a	Briones, the OPD did not provide or
20	subordinate's constitutional	facilitate any discussions, debriefing,
21	violation in this case are that	or retraining with respect to not
22	"There is no evidence in this case	putting weight on a subject's back
23	that the individual officer	and not leaving a subject in a prone
24	defendants were disciplined, fired,	position for an extended period of
25	or retrained in response to their	time. <i>See also</i> Clark Decl. at ¶ 38;
26	conduct with this incident. There is	
27	no evidence that a final policy	
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1	maker disapproved of the conduct	
2	of any of the individual officer	
3	defendants with respect to this	
4	incident or found their conduct to	
5	be out of policy.”	
6	Pl. Cynthia Briones’s Response to	
7	City’s Interrogatory No. 5. Copies	
8	of relevant pages of Cynthia	
9	Briones’s	
10	Interrogatory Responses are attached	
11	to the Roberts Decl. as Exhibit “E.”	
12		
13	19. The only facts Plaintiffs have to	<u>Disputed</u> . Subsequent to the service
14	show that the City’s training	of Plaintiff’s interrogatory responses,
15	policies were inadequate as they	the parties conducted the deposition
16	relate to the allegations in this case	of Detective Darryl Lauritzen, the
17	are that the “manner in which the	person the City of Ontario designated
18	officers restrained [Mr. Briones] is	as the most knowledgeable to speak
19	contrary to basic police training,	on the subject of OPD training with
20	Peace Officer Standards and	respect to training and policies on
21	Training (“POST”) and written City	restraints, including handcuffing and
22	of Ontario Police Department	hobbling, and positional and restraint
23	Policy.”	asphyxia.
24	Pl. Cynthia Briones’s Response to	The OPD does not train its officers
25	City’s Interrogatory No. 7 (Ex. “E”).	that even before a person is
26		handcuffed, restraining a person chest
27		down for a prolonged period of time
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1		with weight on his back could affect
2		the person's ability to breathe. Ex. 15
3		to Masongsong Decl. (PMK Depo.) at
4		37:16-23.
5		The OPD does not have any written
6		training materials specifically
7		pertaining to positional or restraint
8		asphyxia and does not train its
9		officers that positional or restraint
10		asphyxia can occur. Ex. 15 to
11		Masongsong Decl. (PMK Depo.) at
12		25:8-11, 26:12-15, 35:1-6, 35:14-24.
13		The City does not train its officers
14		with respect to the "physiology of a
15		struggle," in other words, that if a
16		person is chest down with weight on
17		his back, the person could be
18		attempting to lift up to assist in their
19		breathing, and the officer perceives
20		this as resistance and pushes the
21		person back down. Ex. 15 to
22		Masongsong Decl. (PMK Depo.) at
23		29:1-31:3.
24		Officer Mora does not recall
25		receiving any training from the OPD
26		that even if the subject is not hobbled,
27		if the subject is in a prone position for
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1		a prolonged period of time, that could
2		interfere with the subject's ability to
3		breathe. Ex. 6 to Masongsong Decl.
4		(Mora Depo.) at 91:17-21
5		Officer Mora does not recall
6		receiving any training on positional
7		or restraint asphyxia from the OPD.
8		Ex. 6 to Masongsong Decl. (Mora
9		Depo.) at 89:2-25.
10	20.	Defendant Mora graduated from a
11		POST-certified police academy.
12		Mora Dep. (Ex. "A") at 16:15-24.
13	21.	Defendant Gonzales graduated
14		from a POST-certified police
15		academy.
16		Gonzales Dep. (Ex. "B") at 20:20-
17		24.
18	22.	Defendant Cross graduated from a
19		POST-certified police academy.
20		Dep. of Stafford Cross ("Cross
21		Dep.") at 11:25- 12:8. Copies of
22		relevant pages of the Cross Dep. are
23		attached as Ex. "F" to the Roberts
24		Decl.
25	23.	Defendant Morgan graduated from a
26		POST-certified police academy.
27		Undisputed.

1	Dep. of Kyle Morgan (“Morgan	
2	Dep.) at 10:13- 11:4. Copies of	
3	relevant pages of the Morgan Dep.	
4	are attached as Ex. “G” to the	
5	Roberts Decl.	
6	24. Defendant Brown graduated from a	Undisputed.
7	POST-certified police academy.	
8	Dep. of Darryl Brown (“Brown	
9	Dep.”) at 16:1-2; 19:5-20:14. Copies	
10	of relevant page of the Brown Dep.	
11	are attached as Ex. “H” to the	
12	Roberts Decl.	
13	25. Plaintiffs have no evidence outside	<u>Disputed</u> . The OPD does not have
14	the incident at issue in this case to	any written training materials
15	support the existence of any of the	specifically pertaining to positional or
16	unconstitutional policies alleged in	restraint asphyxia and does not train
17	paragraph 80 of their Second	its officers that positional or restraint
18	Amended Complaint.	asphyxia can occur. Ex. to
19	Pl. Maurice Briones’s Responses to	Masongsong Decl. (PMK Depo.) at
20	City’s Interrogatories 1, 3, 7, 9, 11,	25:8-11, 26:12-15, 35:1-6, 35:14-24.
21	13, 15, 17, 19, and 21. Copies of	<i>See also</i> Clark Decl. at ¶ 37.
22	relevant pages of Maurice Briones’s	
23	responses to the City’s	
24	Interrogatories are attached as Ex. I	
25	to the Roberts Decl.	
26	Plaintiffs’ Additional Material	Plaintiffs’ Supporting Evidence
27	Facts	
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Background of the Incident

26.	Officer Gonzales is 5' 8" and 186 lbs.	Ex. 5 to Masongsong Decl. (Gonzales Depo.) at 19:9-13.
27.	Officer Morgan is 6' 1" and 185 lbs.	Ex. 2 to Masongsong Decl. (Morgan Depo.) at 9:12-18.
28.	Sgt. Cross is 5' 7" and weighed approximately 205 pounds at the time of the incident.	Ex. 3 to Masongsong Decl. (Cross Depo.) at 30:15-31:12.
29.	Officer Brown is 5' 10" and weighed approximately 215 pounds at the time of the incident.	Ex. 4 to Masongsong Decl. (Brown Depo.) at 13:11-19
30.	Officer Mora is 5' 10" and weighs 175 pounds.	Ex. 6 to Masongsong Decl. (Mora Depo.) at 15:1-3.
31.	At the time of this incident, each officer defendant was wearing police equipment that added approximately twenty to thirty pounds to the officer's body weight.	Ex. 5 to Masongsong Decl. (Gonzales Depo.) at 19:17-23; Ex. 3 to Masongsong Decl. (Cross Depo.) at 31:9-20; Ex. 4 to Masongsong Decl. (Brown Depo.) at 74:4-24; Clark Decl. at ¶ 23.
32.	Sultan Nshaiwat ("Mr. Nshaiwat" or "the RP") was driving on Archibald Ave. when he observed a vehicle in the middle of a ranch.	Ex. 1 to Masongsong Decl. (Nshaiwat Depo.) at 15:21-25.
33.	Mr. Nshaiwat called 911 and asked for an ambulance to respond right away.	Ex. 1 to Masongsong Decl. (Nshaiwat Depo.) at 20:7-21:4.

1	34.	The call for service was put out as a	Ex. 5 to Masongsong Decl. (Gonzales
2		“man down” and “medical assist”	Depo.) at 11:16-18, 17:6-9; Ex. 11 to
3		call.	Masongsong Decl. (Police Event) at
4			1:17:08, 1:18:58.
5	35.	Prior to arriving on scene, the	Ex. 5 to Masongsong Decl. (Gonzales
6		officers had information that Mr.	Depo.) at 11:10-13, 11:18-19; Ex. 3
7		Briones needed some help, including	to Masongsong Decl. (Cross Depo.)
8		medical attention.	at 51:11-14 (testifying that he
9			understood, even before getting to the
10			scene, that Mr. Briones might need
11			some medical attention); Ex. 4 to
12			Masongsong Decl. (Brown Depo.) at
13			42:18-21.
14	36.	Prior to arriving on scene, the	Ex. 2 to Masongsong Decl. (Morgan
15		officers knew that medical attention	Depo.) at 19:11-20; Ex. 3 to
16		had been called for Mr. Briones	Masongsong Decl. (Cross Depo.) at
17		because of the accident and that the	51:11-14; Ex. 6 to Masongsong Decl.
18		paramedics were on their way.	(Mora Depo.) at 83:12-13.
19	37.	Prior to arriving on scene, the	Ex. 5 to Masongsong Decl. (Gonzales
20		officers had information that Mr.	Depo.) at 11:15-12:2; Ex. 11 to
21		Briones was bleeding.	Masongsong Decl. (Police Event) at
22			1:18:58; Ex. 3 to Masongsong Decl.
23			(Cross Depo.) at 15:18-25; Ex. 6 to
24			Masongsong Decl. (Mora Depo.) at
25			19:7-9.
26	38.	Prior to Mr. Briones exiting the	Ex. 5 to Masongsong Decl. (Gonzales
27		vehicle, the officers had no	Depo.) at 15:3-11; Ex. 3 to
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1		information that Mr. Briones had	Masongsong Decl. (Cross Depo.) at
2		committed any crime.	45:15-46:3; Ex. 4 to Masongsong
3			Decl. (Brown Depo.) at 29:18-21
4	39.	The officers had no information that	Ex. 5 to Masongsong Decl. (Gonzales
5		Mr. Briones was intoxicated.	Depo.) at 33:15-17; <i>see generally</i> Ex.
6			11 to Masongsong Decl. (Police
7			Event).
8	40.	The officers had no information that	See generally Ex. 11 to Masongsong
9		Mr. Briones had a weapon.	Decl. (Police Event); Ex. 2 to
10			Masongsong Decl. (Morgan Depo.) at
11			28:13-15; Ex. 4 to Masongsong Decl.
12			(Brown Depo.) at 30:4-9 (testifying
13			that he never saw a weapon in Mr.
14			Briones' hands or on his person); Ex.
15			6 to Masongsong Decl. (Mora Depo.)
16			at 29:4-6 (same); <i>see generally</i> Ex. 11
17			to Masongsong Decl. (Police Event).
18	41.	The officers did not know anything	Ex. 2 to Masongsong Decl. (Morgan
19		about Mr. Briones prior to this	Depo.) at 16:9-11.
20		incident.	
21	42.	The ground where this incident	Ex. 5 to Masongsong Decl. (Gonzales
22		occurred was soft dirt.	Depo.) at 13:20-14:5; Ex. 2 to
23			Masongsong Decl. (Morgan Depo.) at
24			28:1-5; Ex. 3 to Masongsong Decl.
25			(Cross Depo.) at 31:24-32:4); Ex. 6 to
26			Masongsong Decl. (Mora Depo.) at
27			30:21-23, 37:6-9.
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1	43.	The officers and Mr. Nshaiwat described that their feet sank into the soft dirt, making it difficult to walk.	Ex. 1 to Masongsong Decl. (Nshaiwat Depo.) at 17:14-16, 47:17-21; Ex. 5 to Masongsong Decl. (Gonzales Depo.) at 13:20-14:5 (testifying that he sank into the dirt about two feet as he was approaching the vehicle and that the soft dirt almost caused Gonzales to fall); Ex. 2 to Masongsong Decl. (Morgan Depo.) at 28:1-5 (testifying that the surface was dusty and your feet would sink into it).
2	44.	There was dust in the air during this incident.	Ex. 2 to Masongsong Decl. (Morgan Depo.) at 28:1-5 (testifying that the surface was dusty); Ex. 3 to Masongsong Decl. (Cross Depo.) at 31:24-32:4 (testifying that there was dust in the air during the struggle).
3	45.	At the time of this incident, traffic on Archibald Ave. was very light.	Ex. 7 to Masongsong Decl. (Wightman Depo.) at 30:3-5.
4	46.	Mr. Briones was obese.	Ex. 5 to Masongsong Decl. (Gonzales Depo.) at 61:5; Ex. 2 to Masongsong Decl. (Morgan Depo.) at 16:14-17; Ex. 3 to Masongsong Decl. (Cross Depo.) at 30:12-14.
5	The Incident		

1	46.	Mr. Nshaiwat told Officer Mora that	Ex. 1 to Masongsong Decl. (Nshaiwat
2		Mr. Briones needed an ambulance.	Depo.) at 22:21-24.
3	47.	The officers observed blood on Mr.	Ex. 5 to Masongsong Decl. (Gonzales
4		Briones' face.	Depo.) at 16:7-9, 34:18-20, 43:13-21;
5			Ex. 6 to Masongsong Decl. (Mora
6			Depo.) at 26:4-8.
7	48.	Neither the officers nor the RP	Ex. 5 to Masongsong Decl. (Gonzales
8		smelled any alcohol on Mr. Briones	Depo.) at 33:15-17; Ex. 4 to
9		or saw any evidence of alcoholic	Masongsong Decl. (Brown Depo.) at
10		beverages.	43:7-9; Ex. 6 to Masongsong Decl.
11			(Mora Depo.) at 29:2-3, 71:22-72:2;
12			Ex. 1 to Masongsong Decl. (Nshaiwat
13			Depo.) at 26:4-15, 75:21-25.
14	49.	One of the officers who arrived after	Ex. 1 to Masongsong Decl. (Nshaiwat
15		Officer Mora but before Sgt. Cross	Depo.) at 29:5-20, 33:13-34:3.
16		stated, "the mother fucker is drunk"	
17		as he approached the scene from	
18		approximately 20 feet away from	
19		Mr. Briones.	
20	50.	The officers formed the impression	Ex. 4 to Masongsong Decl. (Brown
21		that the solo-vehicle accident was	Depo.) at 44:9-11; Ex. 6 to
22		serious.	Masongsong Decl. (Mora Depo.) at
23			27:7-12.
24	51.	When Officer Mora first saw Mr.	Ex. 6 to Masongsong Decl. (Mora
25		Briones, he thought he needed some	Depo.) at 27:13-28:2, 83:6-8.
26		medical attention because Mr.	
27		Briones had just been in a car	
28			

1		accident and was bleeding and	
2		confused.	
3	52.	Officer Mora instructed the RP to	Ex. 6 to Masongsong Decl. (Mora
4		remove Mr. Briones' seatbelt.	Depo.) at 21:13-17.
5	53.	Officers Mora and Gonzales pulled	Ex. 5 to Masongsong Decl. (Gonzales
6		Mr. Briones out of the vehicle.	Depo.) at 12:15-24, 14:11-12
7			(testifying that he observed Officer
8			Mora attempting to get Mr. Briones
9			out of the vehicle and that he
10			(Gonzales) assisted in moving Mr.
11			Briones away from the vehicle); Ex. 2
12			to Masongsong Decl. (Morgan Depo.)
13			at 17:5-8 (testifying that he observed
14			Officers Mora and Gonzales assist
15			Mr. Briones out of the vehicle); Ex. 6
16			to Masongsong Decl. (Mora Depo.) at
17			21:21-23, 25:1-12; Ex. 14 to
18			Masongsong Decl. (Video) at 00:33-
19			00:46.
20	54.	When the officers pulled Mr. Briones	Clark Decl. at ¶ 22.
21		from the vehicle, there was no crime	
22		in progress.	
23	55.	No witness or officer reported being	Clark Decl. at ¶ 22.
24		threatened by Mr. Briones or seeing	
25		him with a weapons or reported	
26		being injured by Mr. Briones.	

1	56.	The officers never should have	Clark Decl. at ¶ 22.
2		forced Mr. Briones to sit down and	
3		never should have handcuffed him.	
4		Both the detention and the scope and	
5		manner of the detention were	
6		unreasonable.	
7	57.	When Mr. Briones was pulled from	Ex. 5 to Masongsong Decl. (Gonzales
8		the vehicle, he was incoherent and	Depo.) at 36:15-17; Ex. 2 to
9		did not appear to understand where	Masongsong Decl. (Morgan Depo.) at
10		he was.	17:23-25 (testifying that Mr. Briones
11			appeared “disoriented”); Ex. 4 to
12			Masongsong Decl. (Brown Depo.) at
13			25:14-18 (testifying that Mr. Briones
14			appeared out of it and disoriented);
15			Ex. 6 to Masongsong Decl. (Mora
16			Depo.) at 26:9-11 (testifying that Mr.
17			Briones looked confused).
18	58.	The officers formed the impression	Ex. 14 to Masongsong Decl. (Video)
19		that Mr. Briones’ vehicle was	at 01:04-01:06.
20		steaming.	
21	59.	Officer Brown formed the	Ex. 4 to Masongsong Decl. (Brown
22		impression that Mr. Briones was	Depo.) at 29:21-25, 44:5-8.
23		disoriented because he had been	
24		injured from the accident.	
25	60.	Mr. Briones struggled to stand up	Ex. 5 to Masongsong Decl. (Gonzales
26		and had difficulty walking after he	Depo.) at 15:12-14, 36:18-20; Ex. 2
27		was assisted out of the vehicle.	to Masongsong Decl. (Morgan Depo.)
28			

1		at 17:19-22; Ex. 1 to Masongsong
2		Decl. (Nshaiwat Depo.) at 30:15-
3		31:10.
4	61.	After Mr. Briones was taken out of
5		the car but before he was taken to the
6		ground, Mr. Briones looked like he
7		could pass out.
8	62.	The symptoms Mr. Briones was
9		displaying are consistent with Mr.
10		Briones being disoriented and
11		injured from an accident.
12	63.	It did not appear that Mr. Briones
13		could have run away.
14	64.	When Mr. Briones was removed
15		from the vehicle, Mr. Nshaiwat
16		perceived Mr. Briones to be in pain
17		based on the sounds Mr. Briones was
18		making.
19		
20	65.	Mr. Briones was initially
21		cooperative.
22	66.	The officer never should have forced
23		Mr. Briones to sit down and never
24		should have handcuffed him. Both
25		the detention and the scope and
26		manner of the detention were
27		unreasonable.
28		

1	67.	Officer Gonzales pushed and kicked the back of Mr. Briones' knee to take him to the ground.	Ex. 5 to Masongsong Decl. (Gonzales Depo.) at 18:8-12.
2			
3			
4	68.	Officers Mora and Gonzales pulled Mr. Briones to the ground hard.	Ex. 5 to Masongsong Decl. (Gonzales Depo.) at 15:24-25:1, 17:16
5			(testifying that he pulled Mr. Briones to the ground hard); Ex. 4 to
6			Masongsong Decl. (Brown Depo.) at
7			25:19-26:16 (testifying that Officer
8			Gonzales, along with Officer Morgan
9			or Officer Mora, took Mr. Briones to
10			the ground); Ex. 6 to Masongsong
11			Decl. (Mora Depo.) at 30:20-31:6
12			(testifying that he pulled Mr. Briones
13			backwards and that Mr. Briones did
14			not go to the ground voluntarily).
15			
16			
17	69.	After taking Mr. Briones to the ground, the officer defendants restrained him in a face and chest down position.	Ex. 5 to Masongsong Decl. (Gonzales Depo.) at 26:20-25; Ex. 2 to
18			Masongsong Decl. (Morgan Depo.) at
19			22:13-25:19; Ex. 4 to Masongsong
20			Decl. (Brown Depo.) at 26:17-27:3;
21			Clark Decl. at ¶ 20.
22			
23	70.	The officer defendants cuffed Mr. Briones' hands behind his back when Mr. Briones was in a prone (face and chest down) position.	Ex. 5 to Masongsong Decl. (Gonzales Depo.) at 43:22-44:5; Ex. 2 to
24			Masongsong Decl. (Morgan Depo.) at
25			22:13-23:4; Ex. 3 to Masongsong
26			Decl. (Cross Depo.) at 27:22-24,
27			
28			

1		42:11-13; Ex. 4 to Masongsong Decl.
2		(Brown Depo.) at 30:16-32:5, 34:7-
3		12; Ex. 6 to Masongsong Decl.
4		(Mora Depo.) at 49:22-50:1.
5	71. Mr. Briones was handcuffed at	Ex. 2 to Masongsong Decl. (Morgan
6	approximately 1:29:27 a.m.	Depo.) at 40:11-20 (testifying that
7		“one detained” indicates that the
8		subject has been handcuffed); Ex. 11
9		to Masongsong Decl. (Police Event)
10		at page 2; Ex. 6 to Masongsong Decl.
11		(Mora Depo.) at 72:19-73:11.
12	72. Approximately four minutes elapsed	Ex. 14 to Masongsong Decl. (Video)
13	between Mr. Briones being taken to	at 01:17-05:32; Ex. 5 to Masongsong
14	the ground and Mr. Briones being	Decl. (Gonzales Depo.) at 41:3-6; Ex.
15	handcuffed.	2 to Masongsong Decl. (Morgan
16		Depo.) at 31:18-23; Ex. 3 to
17		Masongsong Decl. (Cross Depo.) at
18		28:12-15; Ex. 4 to Masongsong Decl.
19		(Brown Depo.) at 30:16-31:1, 34:7-12
20		(estimating 3-5 minutes).
21	73. Mr. Briones was screaming and	Ex. 3 to Masongsong Decl. (Cross
22	groaning in pain during the time that	Depo.) at 32:5-7; Ex. 14 to
23	the officers were handcuffing him.	Masongsong Decl. (Video) at 01:17-
24		05:32; Ex. 2 to Masongsong Decl.
25		(Morgan Depo.) at 40:1-10 (testifying
26		that Mr. Briones had been yelling);

1		Ex. 1 to Masongsong Decl. (Nshaiwat
2		Depo.) at 40:17-41:9, 84:12-16.
3	74.	Ex. 1 to Masongsong Decl. (Nshaiwat
4	It appeared to Mr. Nshaiwat that Mr.	Depo.) at 41:3-6.
5	Briones was struggling in pain as	
6	opposed to resisting the force.	
7	75.	Ex. 5 to Masongsong Decl. (Gonzales
8	Five officers—Brown, Gonzales,	Depo.) at 44:6-18, 47:7-8 (testifying
9	Cross, Morgan, and Mora—	that there were “hands everywhere”);
10	collectively held Mr. Briones down	Ex. 2 to Masongsong Decl. (Morgan
11	in a prone position.	Depo.) at 22:13-25:19 (testifying that
12		Officers Mora and Gonzales were in
13		physical contact with Mr. Briones, on
14		either side of him, that Officer Brown
15		was attempting to hold down Mr.
16		Briones’ feet, and Officer Morgan
17		had his knee on Mr. Briones’ lower
18		back); Ex. 3 to Masongsong Decl.
19		(Cross Depo.) at 23:4-6 (testifying
20		that he saw four officers in contact
21		with Mr. Briones when he arrived);
22		Ex. 4 to Masongsong Decl. (Brown
23		Depo.) at 27:4-29:11 (testifying that
24		he (Brown) held down Mr. Briones’
25		lower back while three officers were
26		on either side of Mr. Briones
27		attempting to handcuff him); Ex. 1 to

1		Masongsong Decl. (Nshaiwat Depo.)
2		at 37:6-18, 89:12-18.
3	76.	Mr. Nashaiwat stated that the
4		officers were tough on Mr. Briones,
5		including using the Taser against
6		him, especially considering that Mr.
7		Briones had just been in a car
8		accident and could barely stand up.
9	77.	During the restraint, both before and
10		after the handcuffing, the officers
11		placed weight on Mr. Briones to
12		keep him from getting up or rolling
13		onto either side.
14		Ex. 2 to Masongsong Decl. (Morgan
15		Depo.) at 25:2-17, 29:7-10, 41:4-21
16		(testifying that he was trying to keep
17		Mr. Briones from rolling or getting
18		up, and observed the other officers
19		doing the same; also testifying that he
20		was trying to keep Mr. Briones flat on
21		the ground; also testifying that he
22		kept a hand on Mr. Briones after he
23		was handcuffed even though he was
24		no longer lifting up), 72:12-16
25		(testifying that he put weight on Mr.
26		Briones to keep him from getting up);
27		Ex. 4 to Masongsong Decl. (Brown
28		Depo.) at 27:18-24 (testifying that the
		officers were trying to keep Mr.
		Briones down in a flat position).
	78.	During the time that the officers
		were holding Mr. Briones down in a
		Ex. 5 to Masongsong Decl. (Gonzales
		Depo.) at 27:8-10; Ex. 2 to

1	prone position, before Mr. Briones	Masongsong Decl. (Morgan Depo.) at
2	was handcuffed, Mr. Briones	28:22-25; Ex. 4 to Masongsong Decl.
3	attempted to lift his chest off the	(Brown Depo.) at 27:11-17, 27:25-
4	ground.	28:3, 33:5-8 (indicating that Mr.
5		Briones was lifting his chest up); Ex.
6		6 to Masongsong Decl. (Mora Depo.)
7		at 40:11-41:11.
8	79. When Mr. Briones attempted to lift	Ex. 5 to Masongsong Decl. (Gonzales
9	his upper body off the ground before	Depo.) at 18:22-23, 25:5-8, 28:3-10,
10	he was handcuffed, Officers	30:17-21, 40:14-20 (testifying that he
11	Gonzales, Brown, and Morgan used	(Gonzales) was using his entire body
12	their strength and body weight to	and all of his strength to hold down
13	push Mr. Briones down on the	Mr. Briones' arm and that he used his
14	ground.	shoulder to push Mr. Briones back
15		down); Ex. 2 to Masongsong Decl.
16		(Morgan Depo.) at 29:1-13 (testifying
17		that he was using his strength and
18		body weight to keep Mr. Briones
19		down on the ground, and observed
20		the other officers doing the same);
21		Ex. 4 to Masongsong Decl. (Brown
22		Depo.) at 34:1-6 (testifying that the
23		officers pushed Mr. Briones down);
24		Ex. 4 to Masongsong Decl. (Brown
25		Depo.) at 50:2-5 (testifying that he
26		applied pressure to Mr. Briones to
27		keep him from getting up); Ex. 6 to
28		

1		Masongsong Decl. (Mora Depo.) at
2		42:12-43:22 (testifying that he used
3		all his strength), 47:14-22; Ex. 1 to
4		Masongsong Decl. (Nshaiwat Depo.)
5		at 93:7-19, 93:25-94:4.
6	80.	The time period where Mr. Briones
7		was trying to lift his chest up and the
8		officers were trying to keep him
9		down was approximately three to
10		four minutes.
11	81.	Mr. Briones was screaming, “ouch,
12		ouch, ouch” during the minutes it
13		took the officers to handcuff him.
14	82.	Before Mr. Briones was handcuffed,
15		Officer Morgan held Mr. Briones
16		down in a prone position by placing
17		his hand and a knee in the area of
18		Mr. Briones’ lower back or buttocks.
19		Ex. 2 to Masongsong Decl. (Morgan
20		Depo.) at 24:12-25:1; 67:21-25
21		(identifying Ex. 28 to the deposition);
22		Ex. 3 to Masongsong Decl. (Cross
23		Depo.) at 24:2-25:8 (testifying that
24		Officer Morgan was trying to hold
25		Mr. Briones’ legs down and may
26		have been kneeling on Mr. Briones’
27		legs).
28	83.	Before Mr. Briones was handcuffed,
		Officers Mora and Gonzales
		prevented Mr. Briones from lifting
		his chest off the ground by removing
		Mr. Briones’ hands from the ground
		Ex. 5 to Masongsong Decl. (Gonzales
		Depo.) at 31:19-22 (testifying that he
		pulled Mr. Briones’ arm out as hard
		as he could and drove Mr. Briones
		back into the ground); Ex. 6 to

1		and placing Mr. Briones' triceps in	Masongsong Decl. (Mora Depo.) at
2		his hip.	41:21-25, 43:19-22, 48:24-49:4.
3	84.	Before Mr. Briones was handcuffed,	Ex. 4 to Masongsong Decl. (Brown
4		Officer Brown held Mr. Briones	Depo.) at 27:4-10 (testifying that he
5		down flat in a prone position by	tried to keep Mr. Briones flat on the
6		placing a hand on Mr. Briones' lower	ground), 28:4-10 (testifying that Mr.
7		back.	Briones was prone when he (Brown)
8			had his hand on Mr. Briones' lower
9			back).
10	85.	When Mr. Briones was lifting his	Ex. 4 to Masongsong Decl. (Brown
11		chest off the ground, Officer Brown	Depo.) at 35:21-36:2.
12		assisted Officers Mora and Gonzales	
13		in holding Mr. Briones' upper back	
14		down on the ground.	
15	86.	Officer Brown pushed Mr. Briones'	Ex. 4 to Masongsong Decl. (Brown
16		head and neck down into the dirt and	Depo.) at 36:16-37:10 (testifying that
17		at the same time placed his right	he used his knee to keep Mr. Briones
18		knee on Mr. Briones' right upper	down), 39:15-18 ("I knew if I would
19		back area to keep Mr. Briones down	push his head down or neck down
20		and keep his head from lifting up.	enough, along with my knee support,
21			that would keep him down"), 40:5-
22			12, 48:19-21; 49:12-16 (testifying he
23			placed his hand on the back of the
24			head and neck).
25	87.	During the time that Mr. Briones was	Ex. 5 to Masongsong Decl. (Gonzales
26		restrained in a prone position on the	Depo.) at 10-15; Ex. 2 to
27		ground, both before and after the	Masongsong Decl. (Morgan Depo.) at
28			

1		handcuffing, his face was down in	43:6-9, 45:4-7; Ex. 4 to Masongsong
2		the dirt.	Decl. (Brown Depo.) at 47:24-48:20.
3	88.	Officer Gonzales had trouble	Ex. 5 to Masongsong Decl. (Gonzales
4		breathing during this incident	Depo.) at 52:3-9.
5		because he was breathing in dirt.	
6	89.	Prior to Mr. Briones being	Ex. 2 to Masongsong Decl. (Morgan
7		handcuffed, Officer Morgan Tased	Depo.) at 34:15-19; Ex. 16 to
8		Mr. Briones for approximately 16	Masongsong Decl. (Taser Download)
9		seconds.	at page 13.
10	90.	Officer Morgan deployed the Taser	Ex. 2 to Masongsong Decl. (Morgan
11		in both probe mode and dry stun	Depo.) at 36:12-37:3.
12		mode.	
13	91.	Mr. Briones screamed when Officer	Ex. 2 to Masongsong Decl. (Morgan
14		Morgan Tased him.	Depo.) at 37:6-10. Ex. 14 to
15			Masongsong Decl. (Video) at 01:59-
16			02:33; Ex. 1 to Masongsong Decl.
17			(Nshaiwat Depo.) at
18	92.	Sgt. Cross placed a knee in the area	Ex. 5 to Masongsong Decl. (Gonzales
19		of Mr. Briones' lower back or	Depo.) at 46:8-47:3.
20		buttocks.	
21	93.	Sgt. Cross kneeled or stood on the	Ex. 3 to Masongsong Decl. (Cross
22		back of Mr. Briones' legs for	Depo.) at 48:8-50:6; Ex. 1 to
23		approximately one to two minutes.	Masongsong Decl. (Nshaiwat Depo.)
24			at 37:19-38:1, 44:17-45:24.
25	94.	Mr. Briones was in a prone (face and	Ex. 3 to Masongsong Decl. (Cross
26		chest down) position when Sgt.	Depo.) at 49:2-5; Ex. 1 to
27			Masongsong Decl. (Nshaiwat Depo.)
28			

1		Cross was standing or kneeling on	at 36:1-10; Ex. 10 to Masongsong
2		the back of Mr. Briones' legs.	Decl. (Cross Statement) at 16:19-17:4
3	95.	When Mr. Nshaiwat saw Sgt. Cross	Ex. 1 to Masongsong Decl. (Nshaiwat
4		standing on Mr. Briones' legs, he	Depo.) at 36:11-18, 40:17-41:6.
5		told Sgt. Cross that Mr. Briones	
6		might be in pain.	
7	96.	Sgt. Cross stood or kneeled on the	Ex. 3 to Masongsong Decl. (Cross
8		back of Mr. Briones' legs in order to	Depo.) at 48:8-48:23.
9		keep Mr. Briones down and so that	
10		Sgt. Cross could see over the other	
11		officers.	
12	97.	After Mr. Briones was handcuffed,	Ex. 14 to Masongsong Decl. (Video)
13		when he was still chest down in a	at 06:18 (showing Mr. Briones to be
14		prone position, Mr. Briones suddenly	generally still and unresponsive); Ex.
15		stopped moving and appeared to be	17 to Masongsong Decl. (Match-
16		unresponsive.	Action) at 06:18; Ex. 2 to
17			Masongsong Decl. (Morgan Depo.) at
18			30:3-9 (testifying that Mr. Briones
19			was no longer trying to lift up after he
20			was handcuffed), 40:1-10 (testifying
21			that Mr. Briones stopped yelling
22			about the time that he was
23			handcuffed), 45:15-46:15, 48:19-
24			49:10 (testifying that he (Morgan)
25			thought Mr. Briones was faking being
26			passed out); Ex. 3 to Masongsong
27			Decl. (Cross Depo.) at 61:9-18

1		(testifying that Mr. Briones stopped
2		resisting after he was handcuffed);
3		Ex. 10 to Masongsong Decl. (Cross
4		Statement) at 13:11-13 (stating that
5		all the fight went out of Mr. Briones
6		after he was handcuffed), 14:11-13;
7		Ex. 4 to Masongsong Decl. (Brown
8		Depo.) at 50:6-20 (testifying that Mr.
9		Briones suddenly went calm and
10		made a snoring sound), 55:19-25,
11		56:5-8, 57:5-7; Ex. 1 to Masongsong
12		Decl. (Nshaiwat Depo.) at 91:22-
13		92:9.
14	98.	Ex. 14 to Masongsong Decl. (Video)
15	After Mr. Briones was already	at 05:26 (an officer is heard
16	handcuffed, the officers continued to	instructing other officers to keep
17	hold Mr. Briones down in a prone	holding him down) to 07:44 (showing
18	(face and chest down) position with	hands on Mr. Briones' back); Ex. 17
19	their knees and hands.	to Masongsong Decl. (Match-Action)
20		at 05:26-07:44; Ex. 2 to Masongsong
21		Decl. (Morgan Depo.) at 41:4-24
22		(testifying that Mr. Briones was no
23		longer pushing up, but he wanted to
24		make sure Mr. Briones was not going
25		to roll onto either side; also testifying
26		that he held Mr. Briones down at the
27		back of his left shoulder blade); Ex.
28		

1		4 to Masongsong Decl. (Brown
2		Depo.) at 71:4-7, 71:17-25; Ex. 6 to
3		Masongsong Decl. (Mora Depo.) at
4		52:16-23 (testifying that he used his
5		knees and hands to hold down Mr.
6		Briones' legs after the handcuffing).
7	99.	Officer Brown kept his knee on Mr.
8		Briones' upper back even after Mr.
9		Briones was handcuffed, up until the
10		time that Mr. Briones was eventually
11		turned onto his side.
12	100.	Approximately five minutes and
13		thirty seconds after Mr. Briones was
14		taken to the ground, after Mr.
15		Briones had been handcuffed, the
16		officer defendants questioned
17		whether Mr. Briones could breathe.
18	101.	When the officers questioned
19		whether Mr. Briones could breathe,
20		Mr. Briones was still face and chest
21		down.
22	102.	Sgt. Cross questioned whether Mr.
23		Briones could breathe because of the
24		position that Mr. Briones was in
25		(face and chest down) on the ground.

1	103.	The officers did not do anything to	Ex. 6 to Masongsong Decl. (Mora
2		check whether Mr. Briones was	Depo.) at 7:12-14; Ex. 3 to
3		breathing.	Masongsong Decl. (Cross Depo.) at
4			56:22-24.
5	104.	Approximately one minute elapsed	Ex. 14 to Masongsong Decl. (Video)
6		between the officer defendants	at 06:54, 08:00; Ex. 17 to
7		questioning whether Mr. Briones	Masongsong Decl. (Match-Action) at
8		could breathe and Mr. Briones being	06:54-08:00.
9		turned onto his side.	
10	105.	The officer defendants applied a	Ex. 5 to Masongsong Decl. (Gonzales
11		hobble to Mr. Briones when he was	Depo.) at 49:14-19; Ex. 2 to
12		in a prone (chest down) position.	Masongsong Decl. (Morgan Depo.) at
13			47:14-48:5; Ex. 6 to Masongsong
14			Decl. (Mora Depo.) at 53:18-20; Ex.
15			14 to Masongsong Decl. (Video) at
16			06:36-07:37; Ex. 17 to Masongsong
17			Decl. (Match-Action) at 06:36-07:37.
18	106.	Mr. Briones did not kick his legs at	Ex. 6 to Masongsong Decl. (Mora
19		any point after he was hobbled.	Depo.) at 55:14-16, 64:21-23; Ex. 14
20			to Masongsong Decl. (Video) at
21			06:26-08:00; Ex. 17 to Masongsong
22			Decl. (Match-Action) at 06:26-08:00.
23	107.	After Mr. Briones was hobbled,	Ex. 6 to Masongsong Decl. (Mora
24		Officer Mora stood with one foot on	Depo.) at 54:6-55:16, 57:15-23
25		Mr. Briones' ankles and held the	(indicating that Mr. Briones was face
26		strap of the hobble tight for	and chest down during part of the
27			time that Officer Mora held the
28			

1		approximately 30 seconds, in case	hobble and stood on Mr. Briones'
2		Mr. Briones woke up.	ankles); Ex. 17 to Masongsong Decl.
3			("Match-Action") at 05:57-7:30.
4	108.	The paramedics arrived on scene at	Ex. 13 to Masongsong Decl. (Fire
5		approximately 1:27 a.m.	Event) at page 2.
6	109.	In this case, the paramedics were not	Clark Decl. at ¶ 18; Ex. 6 to
7		permitted to treat Mr. Briones until	Masongsong Decl. (Mora Depo.) at
8		they were given clearance by the	84:3-15.
9		officers.	
10	110.	At approximately 1:32:40, Sgt.	Ex. 7 to Masongsong Decl.
11		Wightman instructed the paramedics	(Wightman Depo.) at 39:20-40:4, Ex.
12		to stop staging and respond to Mr.	2 to Wightman Depo. (Wightman
13		Briones.	Report); Ex. 11 to Masongsong Decl.
14			(Police Event) at page 2; Ex. 13 to
15			Masongsong Decl. (Fire Event) at
16			page 2.
17	111.	When the officers advised the	Ex. 7 to Masongsong Decl.
18		paramedics to respond, Mr. Briones	(Wightman Depo.) at 47:10-17,
19		was already unresponsive.	48:24; Ex. 14 to Masongsong Decl.
20			(Video) at 06:30-09:12; Ex. 17 to
21			Masongsong Decl. (Match-Action) at
22			06:30-09:12.
23	112.	Sgt. Wightman instructed Officer	Ex. 7 to Masongsong Decl.
24		Gonzales to turn Mr. Briones onto	(Wightman Depo.) at 33:12-20, 34:5-
25		his side.	13, Ex. 2 to Wightman Depo.
26			(Wightman Report).

1	113.	Even though the officers questioned whether Mr. Briones could breathe, they did not consider turning him onto his side until instructed to do so by Sgt. Wightman.	Ex. 7 to Masongsong Decl. (Wightman Depo.) at 33:12-20, 34:5-13, Ex. 2 to Wightman Depo. (Wightman Report); <i>See</i> Ex. 14 to Masongsong Decl. (Video) at 05:32-07:50 (no discussion of turning Mr. Briones onto his side within the approximate 2 minutes and 30 seconds after he was finally handcuffed); Ex. 17 to Masongsong Decl. (Match-Action) at 05:32-07:50.
2	114.	Approximately six minutes and 40 seconds elapsed between Mr. Briones being taken to the ground and Mr. Briones being turned onto his side.	Ex. 14 to Masongsong Decl. (Video) at 01:20-08:00; Ex. 17 to Masongsong Decl. (Match-Action) at 01:20-08:00.
3	115.	Within the approximate six minutes and 40 seconds between Mr. Briones being taken to the ground and Mr. Briones being turned onto his side, Mr. Briones was generally face and chest down.	Ex. 14 to Masongsong Decl. (Video) at 01:20-08:00; Ex. 17 to Masongsong Decl. (Match-Action) at 01:20-08:00; Ex. 4 to Masongsong Decl. (Brown Depo.) at 31:2-32:5.
4	116.	Approximately two and a half minutes elapsed between Mr. Briones being finally handcuffed in a prone position and Mr. Briones being turned onto his side.	Ex. 14 to Masongsong Decl. (Video) at 05:26, 08:00; Ex. 17 to Masongsong Decl. (Match-Action) at 05:26-08:00; Ex. 2 to Masongsong Decl. (Morgan Depo.) at 48:10-12,

1		49:11-13 (testifying that after Mr.
2		Briones was hobbled, he was still
3		chest down for some period of time).
4	117.	Ex. 14 to Masongsong Decl. (Video)
5	Approximately 30 seconds elapsed	at 07:00-08:00; Ex. 17 to
6	between Mr. Briones being finally	Masongsong Decl. (Match-Action) at
7	hobbled in a prone position and Mr.	07:00-08:00.
8	Briones being turned onto his side.	
9	118.	Ex. 2 to Masongsong Decl. (Morgan
10	For approximately two minutes after	Depo.) at 45:15-46:15, 48:19-49:10,
11	Mr. Briones was handcuffed, before	57:18-59:5.
12	the paramedics contacted Mr.	
13	Briones, Officer Morgan thought Mr.	
14	Briones was faking being passed out.	
15	119.	Ex. 2 to Masongsong Decl. (Morgan
16	Approximately 20 seconds after he	Depo.) at 53:5-9; Ex. 4 to
17	was turned on his side, Mr. Briones	Masongsong Decl. (Brown Depo.) at
18	made a snoring sound.	50:19-20, 58:5-8; Ex. 6 to
19		Masongsong Decl. (Mora Depo.) at
20		58:16-25; Ex. 14 to Masongsong
21		Decl. (Video) at 08:24-08:26; Ex. 17
22		to Masongsong Decl. (Match-Action)
23		at 08:24-08:26.
24	120.	O'Halloran Decl. at ¶ 26.
25	Sometimes agonal (near death)	
26	muscle twitches, seizures mouth	
27	movements and snoring sounds are	
28	misinterpreted as continued	
	resistance or evidence that the	
	subject is doing fine medically.	

1	121.	The kicking Sgt. Cross described	O'Halloran Decl. at ¶ 28.
2		after Mr. Briones was fully	
3		handcuffed, when Mr. Briones	
4		seemed to stop resisting otherwise	
5		and was unresponsive (kicking that	
6		prompted continuing prone restraint	
7		with compression until hobbling was	
8		finished), was likely agonal seizure	
9		activity.	
10	122.	Other than the snoring sound, which	Ex. 6 to Masongsong Decl. (Mora
11		was likely agonal (near death) the	Depo.) at 81:12-17; Ex. 14 to
12		officers found no evidence that Mr.	Masongsong Decl. (Video) at 08:24-
13		Briones was breathing.	08:26;
14	123.	Officer Brown found that Mr.	Ex. 4 to Masongsong Decl. (Brown
15		Briones had a pulse after Mr. Briones	Depo.) at 59:22-60:12; Ex. 2 to
16		was turned onto his side.	Masongsong Decl. (Morgan Depo.) at
17			51:1-25.
18	124.	The paramedics contacted Mr.	Ex. 12 to Masongsong Decl. (Pre-
19		Briones at approximately 1:34 a.m.	hospital Care Report) at page 2,
20			"Patient Vitals."
21	125.	It took the paramedics approximately	Ex. 11 to Masongsong Decl. (Police
22		one minute and twenty seconds to	Event) at page 2 (1:32:40 a.m.); Ex.
23		contact Mr. Briones after they were	12 to Masongsong Decl. (Pre-hospital
24		instructed to stop staging.	Care Report) at page 2, "Patient
25			Vitals" (1:34 a.m.); <i>see</i> Ex. 14 to
26			Masongsong Decl. (Video) at 07:54,
27			08:03, 09:12; Ex. 17 to Masongsong
28			

1		Decl. (Match-Action) at 07:54, 08:03,
2		09:12; <i>see</i> Ex. 2 to Masongsong Decl.
3		(Morgan Depo.) at 54:1-3; <i>see</i> Ex. 5
4		to Masongsong Decl. (Gonzales
5		Depo.) at 55:2-23.
6	126.	The handcuffs were not removed
7		from Mr. Briones until the
8		paramedics contacted Mr. Briones
9		and asked the officers to remove the
10		handcuffs.
11	127.	When the paramedics contacted Mr.
12		Briones, Mr. Briones had no pulse
13		and was not breathing.
14		Ex. 12 to Masongsong Decl. (Pre-
15		hospital Care Report) at page 2,
16		“Patient Vitals.”
17	The Officer Defendants Acted Inappropriately	
18	128.	Nothing in the record indicates that
19		Mr. Briones posed a threat that
20		would justify staging the paramedics.
21		Clark Decl. at ¶ 18, ¶ 24, ¶ 25.
22	129.	Mr. Briones never verbally
23		threatened anyone at any point
24		during this incident, nor did he make
25		any threatening gestures.
26		Ex. 5 to Masongsong Decl. (Gonzales
27		Depo.) at 29:17-19; Ex. 2 to
28		Masongsong Decl. (Morgan Depo.) at
		28:10-12; Ex. 4 to Masongsong Decl.
		(Brown Depo.) at 30:10-12; Ex. 6 to
		Masongsong Decl. (Mora Depo.) at
		29:7-9; Ex. 1 to Masongsong Decl.
		(Nshaiwat Depo.) at 29:21-25, ; Clark
		Decl. at ¶ 18, ¶ 24, ¶ 25.

1	130.	Mr. Briones did not punch, kick, hit,	Ex. 5 to Masongsong Decl. (Gonzales
2		or strike anyone at any point during	Depo.) at 29:20-21; Ex. 2 to
3		this incident.	Masongsong Decl. (Morgan Depo.) at
4			28:19-21, 44:10-11; Ex. 3 to
5			Masongsong Decl. (Cross Depo.) at
6			60:19-23; Ex. 4 to Masongsong Decl.
7			(Brown Depo.) at 30:13-15; Clark
8			Decl. at ¶ 18, ¶ 24, ¶ 25; Ex. 1 to
9			Masongsong Decl. (Nshaiwat Depo.)
10			at 47:22-24; Ex. 10 to Masongsong
11			Decl. (Cross Statement) at 12:22-24.
12	131.	Mr. Briones was not violent or	Clark Decl. at ¶ 18, ¶ 24, ¶ 25.
13		assaultive during this incident.	
14	132.	Sgt. Cross and Officers Brown,	Clark Decl. at ¶ 12.
15		Mora, Gonzales, and Morgan lacked	
16		reasonable suspicion to detain Mr.	
17		Briones and lacked probable cause to	
18		arrest him.	
19	133.	Based on their observations that Mr.	Clark Decl. at ¶ 13.
20		Briones was bleeding and had just	
21		been in a car accident, the officers	
22		would understand (per their training)	
23		that Mr. Briones would be	
24		disoriented and cognitively impaired	
25		as a result of the accident. Even	
26		taking the officers' account as true	
27		(that they suspected Mr. Briones to	
28			

1		be under the influence), then they	
2		would have contemplated that Mr.	
3		Briones' understanding and	
4		compliance would be altered, and	
5		should have adjusted their approach	
6		accordingly.	
7	134.	Nothing in the record indicates that	Clark Decl. at ¶ 14
8		Mr. Briones' vehicle was on fire or	
9		in danger of catching fire.	
10	135.	When the paramedics were treating	Ex. 8 to Masongsong Decl.
11		Mr. Briones, Officer Villalpando	(Villalpando Depo.) at 27:14-17,
12		searched Mr. Briones' car for ID.	29:11-17.
13	136.	At the time of his deposition, Officer	Ex. 6 to Masongsong Decl. (Mora
14		Mora inaccurately stated that Mr.	Depo.) at 34:20.
15		Briones' vehicle was "flaming."	
16	137.	It was inappropriate for Officers	Clark Decl. at ¶ 13.
17		Mora and Gonzales to pull Mr.	
18		Briones out of the vehicle when the	
19		officers had information that Mr.	
20		Briones had been injured in the car	
21		accident.	
22	138.	The officers should have instructed	Clark Decl. at ¶ 17
23		Mr. Briones to remain in his vehicle	
24		and wait for the paramedics, who	
25		were on their way to the scene.	
26	139.	It was inappropriate for the officers	Clark Decl. at ¶ 12, ¶ 13 ¶ 17, ¶ 22.
27		to take Mr. Briones to the ground	
28			

1	when they had no information that	
2	Mr. Briones had committed any	
3	crime, no information that Mr.	
4	Briones was intoxicated, and no	
5	information that Mr. Briones was	
6	armed, especially considering the	
7	officers knew Mr. Briones had been	
8	injured in the car accident.	
9	140. Any resistance by Mr. Briones was	Clark Decl. at ¶ 24, ¶ 25.
10	minimal and did not justify the	
11	officers' use of force against him.	
12	141. Sgt. Cross' kneeling and/or standing	Clark Decl. at ¶ 32, ¶ 33.
13	on Mr. Briones was unreasonable	
14	and excessive.	
15	142. It was inappropriate for the officers	Clark Decl. at ¶ 32, ¶ 33.
16	to place weight and pressure on Mr.	
17	Briones' back. This violated training	
18	and standards that officers should not	
19	put weight or pressure on someone	
20	restrained in this fashion because it	
21	can make it more difficult for the	
22	subject to breathe.	
23	143. It is a national standard that police	Clark Decl. at ¶ 28
24	officers are trained (1) regarding	
25	positional and/or restraint asphyxia,	
26	(2) that prone body positions and	
27	certain methods of restraint can	
28		

1	cause difficulty breathing and can	
2	result in death by asphyxia, (3) the	
3	risk for asphyxial death is	
4	compounded following a struggle	
5	with the officer, (4) the risk for	
6	asphyxia death is compounded by	
7	applying pressure to a suspect when	
8	the subject is in a chest and/or	
9	stomach down position, and (5) how	
10	to avoid certain methods of restraint,	
11	and safely restrain suspects, so as to	
12	prevent such death. Any respectable	
13	law enforcement agency would be	
14	expected to have this training.	
15	144. Police officers are trained that if a	Clark Decl. at ¶ 30
16	subject has difficulty breathing, they	
17	should immediately remove all	
18	restraints, including hobbles and	
19	handcuffs, and turn the subject onto	
20	his side or place him in a seated	
21	position, to help the subject breathe.	
22	Again, any respectable law	
23	enforcement agency would have this	
24	training.	
25	145. The officers did not immediately	Clark Decl. at ¶ 30.
26	remove the handcuffs from behind	
27	Mr. Briones or the hobble from his	
28		

1		legs after they noticed he was	
2		unconscious, was possibly not	
3		breathing, and had become	
4		unresponsive.	
5	146.	The record in this case indicates that	Ex. 3 to Masongsong Decl. (Cross
6		the officers did not remove the	Depo.) at 81:21-25; Clark Decl. at ¶
7		handcuffs from Mr. Briones until	30.
8		instructed to do so by the	
9		paramedics, and did not remove the	
10		hobble.	
11	147.	The officer defendants collectively	Clark Decl. at ¶ 35.
12		failed to intervene and/or stop the	
13		unnecessary and excessive restraint	
14		of and force inflicted on Mr. Briones	
15		by the other involved officers.	
16	148.	The record indicates that none of the	Clark Decl. at ¶ 36
17		officers sought medical treatment as	
18		a result of this incident.	
19	Officer Training with Respect to Positional and Restraint Asphyxia		
20	149.	The OPD does not have any written	Ex. 15 to Masongsong Decl. (PMK
21		training materials specifically	Depo.) at 25:8-11, 26:12-15, 35:1-6,
22		pertaining to positional or restraint	35:14-24.
23		asphyxia and does not train its	
24		officers that positional or restraint	
25		asphyxia can occur.	
26	150.	The only policy the City has with	Ex. 9 to Masongsong Decl. (Ontario
27		respect to the risks to a person who is	Police Department Policy 306 -
28			

1	chest down for a prolonged period of	“Handcuffing and Restraints”); Ex.
2	time with weight on his back is	15 to Masongsong Decl. (PMK
3	Section 306.71(c)-(d) of the City of	Depo.) at 46:20-51:5.
4	Ontario Police Department’s written	
5	policy, “Guidelines for Use of Leg	
6	Restraints”:	
7	“Once secured, the person should be	
8	placed in a seated or upright position,	
9	secured with a seat belt, and shall not	
10	be placed on his/her stomach for an	
11	extended period, as this could reduce	
12	the person’s ability to breathe.”	
13	“The restrained person should be	
14	continually monitored by an officer	
15	while in the leg restraint. The officer	
16	should ensure that the person does	
17	not roll onto and remain on his/her	
18	stomach.”	
19	151. The OPD trains its officers to turn a	Ex. 2 to Masongsong Decl. (Morgan
20	subject onto his side or sit the subject	Depo.) at 69:17-24; Ex. 3 to
21	up only after the subject is restrained.	Masongsong Decl. (Cross Depo.) at
22		39:20-25 (testifying that OPD officers
23		move a subject into a position that is
24		not life threatening only after the
25		subject has been handcuffed) and
26		40:11-14; Ex. 15 to Masongsong

1		Decl. (PMK Depo.) at 37:5-15,
2		40:14-18.
3	152.	Ex. 15 to Masongsong Decl. (PMK
4	The OPD does not train its officers	Depo.) at 37:16-23; Clark Decl. at ¶
5	that even before a person is	38.
6	handcuffed, restraining a person	
7	chest down for a prolonged period of	
8	time with weight on his back could	
9	affect the person's ability to breathe.	
10	153.	Ex. 3 to Masongsong Decl. (Cross
11	The OPD trains its officers to	Depo.) at 37:13-16, 38:7-22
12	handcuff the subject prior worrying	(testifying that OPD officers handcuff
13	about turning the subject onto his	a subject before "worrying about
14	side or placing the subject in a seated	other matters"); Ex. 2 to Masongsong
15	position.	Decl. (Morgan Depo.) at 69:17-24
16		(testifying that he is trained to turn
17		the subject onto his side after the
18		subject is handcuffed).
19	154.	Ex. 15 to Masongsong Decl. (PMK
20	The City's PMK is responsible for	Depo.) at 18:9-16, 35:14-24.
21	coordinating all training.	
22	155.	Ex. 15 to Masongsong Decl. (PMK
23	The City's PMK believes positional	Depo.) at 26:11-15, 27:5-10.
24	and restraint asphyxia is a "rumor"	
25	or "buzz word."	
26	156.	Ex. 15 to Masongsong Decl. (PMK
27	The City does not train its officers	Depo.) at 29:1-31:3.
28	with respect to the "physiology of a	
	struggle," in other words, that if a	
	person is chest down with weight on	
	his back, the person could be	

1	attempting to lift up to assist in their	
2	breathing, and the officer perceives	
3	this as resistance and pushes the	
4	person back down.	
5	157. The OPD does not train its officers	Ex. 3 to Masongsong Decl. (Cross
6	(including not having any written	Depo.) at 37:9-17 (testifying that the
7	training materials) that placing	focus is taking the person into
8	weight on a subject's back when the	custody), 39:1-9 (testifying that the
9	subject is in a face and chest down	concern is getting the person
10	position for a prolonged period of	handcuffed, as opposed to being
11	time can interfere with the subject's	concerned about weight on the
12	ability to breathe.	subject's back), 44:24-45:8 (testifying
13		that he has no training that weight
14		applied to the back of a person who is
15		chest down before the person is
16		handcuffed can make it difficult for
17		the person to breathe); Ex. 15 to
18		Masongsong Decl. (PMK Depo.) at
19		28:21-25.
20	158. The City does not train its officers	Ex. 15 to Masongsong Decl. (PMK
21	(including not having any written	Depo.) at 28:14-20.
22	training materials) leaving a person	
23	in a prone position for an extended	
24	period of time could affect the	
25	person's ability to breathe.	
26		
27		
28		

1	159.	Other than a single incident during	Ex. 6 to Masongsong Decl. (Mora
2		field training, Officer Mora does not	Depo.) at 88:15-24, 91:14-16; 93:8-
3		recall receiving any training from the	12.
4		OPD that an officer should turn a	
5		subject from a prone position onto	
6		his side to make it easier for the	
7		subject to breathe.	
8	160.	Officer Mora does not recall	Ex. 6 to Masongsong Decl. (Mora
9		receiving any training on positional	Depo.) at 89:2-25.
10		or restraint asphyxia from the OPD.	
11	161.	Officer Mora does not recall	Ex. 6 to Masongsong Decl. (Mora
12		receiving any training from the OPD	Depo.) at 91:17-21
13		that even if the subject is not	
14		hobbled, if the subject is in a prone	
15		position for a prolonged period of	
16		time, that could interfere with the	
17		subject's ability to breathe.	
18	162.	Officer Mora doesn't recall specific	Ex. 6 to Masongsong Decl. (Mora
19		training that if an individual is chest	Depo.) at 91:22-92:1.
20		down for a prolonged period of time	
21		and there is weight applied to the	
22		person's back, that could affect the	
23		person's ability to breathe.	
24	163.	Officer Brown has had training that	Ex. 4 to Masongsong Decl. (Brown
25		one of the reasons to put a suspect on	Depo.) at 61:20-25
26		his side (as opposed to chest down)	
27			
28			

1		is to assist the airway and allow the	
2		suspect to breathe more easily.	
3	164.	Gonzales did have training with the	Ex. 5 to Masongsong Decl. (Gonzales
4		OPD that placing a suspect in a	Depo.) at 59:24-60:8
5		prone position for a prolonged period	
6		of time with weight applied to hold	
7		the suspect down would interfere	
8		with the suspect's ability to breathe	
9		and could potentially cause the	
10		suspect to die.	
11	165.	Following the incident with Mr.	Ex. 6 to Masongsong Decl. (Mora
12		Briones, the OPD did not provide or	Depo.) at 96:2-17.
13		facilitate any discussions, debriefing,	
14		or retraining with respect to not	
15		putting weight on a subject's back	
16		and not leaving a subject in a prone	
17		position for an extended period of	
18		time.	
19	166.	Officers are generally trained that	Clark Decl. at ¶ 37.
20		obesity makes a person more	
21		susceptible to positional and restraint	
22		asphyxia.	
23	167.	The OPD does not provide training	Ex. 5 to Masongsong Decl. (Gonzales
24		with respect to risk factors that make	Depo.) at 60:17-21 (testifying that he
25		a person more susceptible to	doesn't recall any training on risk
26		positional and restraint asphyxia,	factors for susceptibility to positional
27		such as obesity.	

1		and restraint asphyxia such as
2		obesity).
3	168.	The OPD utterly failed to properly
4		train their personnel regarding the
5		required response to medical
6		emergencies and also with respect to
7		the required procedures to avoid
8		positional and/or restraint asphyxia
9		injuries and deaths
10	The Death	
11	169.	Ronald O'Halloran, M.D. is of the
12		opinion that Kyle Briones ultimately
13		died from restraint asphyxia with
14		compression. The asphyxia caused
15		loss of consciousness, respiratory
16		arrest and, finally, cardiac arrest. The
17		ultimately fatal asphyxia occurred
18		during a struggle with and prone
19		restraint procedures by Ontario
20		police officers.
21	170.	The probable trigger for Mr.
22		Briones' asphyxial death was likely
23		the effects of the way he was
24		restrained prone and compressed by
25		the pressure on his back the officers.
26	171.	The presence of a pulse after Mr.
27		Briones went unresponsive indicates
28		

1	that a cardiac arrhythmia did not	
2	cause the loss of consciousness and	
3	the loss of breathing that led directly	
4	to Mr. Briones' death; rather, the fact	
5	that he had a pulse after he went	
6	unresponsive and stopped breathing	
7	supports death by restraint asphyxia.	
8	172. Mr. Briones did not die because of	O'Halloran Decl. at ¶ 34.
9	"excited delirium syndrome."	
10		
11	173. Had Mr. Briones not been restrained	O'Halloran Decl. at ¶ 35
12	the way he was on the day of the	
13	incident, he would not have died.	
14		
15	174. Mr. Briones' death certificate would	O'Halloran Decl. at ¶ 36.
16	more accurately be certified as	
17	follows:	
18	<u>Cause of Death:</u> Asphyxia	
19	during prone restraint with	
20	compression by police officers	
21	(restraint asphyxia)	
22	<u>Other significant conditions</u>	
23	(contributing to cause of death	
24	but not related to above	
25	cause): Obesity and	
26	hypertensive heart disease	
27	<u>Manner of death:</u> Homicide	
28		

1		<u>How injury occurred:</u> Subject	
2		was restrained prone with	
3		chest compression and	
4		obstruction of external airway	
5		by multiple police officers.	
6	175.	It should be noted that Mr. Briones'	O'Halloran Decl. at ¶ 37
7		toxicology report clearly establishes	
8		that Mr. Briones did not have any	
9		amount of alcohol,	
10		methamphetamine, or any other	
11		illicit drug or substance in his system	
12		at the time of his death.	